Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Developing a Unified Intercarrier	)	CC Docket No. 01-92
Compensation Regime	)	
	)	

COMMENTS OF THE STATE INDEPENDENT TELEPHONE ASSOCIATIION OF KANSAS

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Dated: October 25, 2006

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SUMMARY

The SITA member telephone companies support the Missoula Plan. SITA specifically supports the Plan's establishment of a separate Track for small rural carriers and a reform structure that ensures that such carriers will not be required to reduce their intrastate access service rates below their current levels for interstate access charges. In these respects, the Plan properly recognizes the unique circumstances facing small rural carriers.

The Plan, however, arbitrarily treats small rural carriers that acquire exchanges from very large carriers the same as large carriers, even though significant differences exist between such carriers. The Plan's requirement that such acquired exchanges retain the Track designation of the selling carrier would erect unwarranted barriers to the acquisition and modernization of rural exchanges by small carriers, which would undermine the goal of bringing innovation to underserved rural communities.

In light of the negative repercussions that will result from the Track retention requirement and the increased competitive challenges that small rural carriers face, SITA urges the Commission to tailor the Missoula Plan, by adding a limited exception to the Track retention requirement for small rural carriers serving 50,000 or fewer access lines. Doing so would be consistent with the Commission's longstanding commitment to reducing regulatory and administrative burdens on small carriers and would further the public interest in ensuring a more advanced telecommunications infrastructure for rural America.

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OF KANSAS

The State Independent Telephone Association of Kansas ("SITA") hereby responds to the Federal Communications Commission's ("Commission") request for comments on the intercarrier compensation reform plan filed in this proceeding by the National Association of Regulatory Utility Commissioners' Task Force on Intercarrier Competition (the "Missoula Plan" or "Plan").[1] Reforming the existing intercarrier compensation regime is a goal deserving of the highest levels of industry cooperation and support. The SITA member telephone companies commend the industry members whose commitment, efforts, and perseverance in achieving this goal fueled the development of the Missoula Plan.

As discussed below, SITA supports the Missoula Plan.[2] SITA also supports the small rural carrier exception to the Plan's Track Retention Rule (defined below)[3] proposed by Rural

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1 *Comment Sought on Missoula Intercarrier Compensation Reform Plan,* Public Notice, CC Docket No. 01-92, DA 06-1510 (WCB, July 25, 2006), *modified*, *Developing a Unified Intercarrier Compensation Regime,* Order, DA 06-1730 (WCB, Aug. 29, 2006).

2 The SITA member telephone companies will submit or have submitted comments on the Missoula Plan, either individually or through the joint comments of the Rural Alliance.

3 *See* Section III, *infra.*

Telephone Service Company, Inc. ("RuralTel") in its comments on the Missoula Plan.[4] SITA urges the Commission to carefully consider the impact that the Track Retention Rule will have on small rural ILECs and the communities they serve. For the reasons discussed below, SITA strongly urges the Commission to modify the Plan by incorporating a limited exception to the Track Retention Rule for small rural ILECs serving 50,000 or fewer access lines.

I. BACKGROUND

SITA has served as a cohesive force for Kansas rural independent telephone companies since its formation in 1961. From a handful of telephone company members at its inception, SITA's membership today includes 27 rural independent telephone companies and 78 associate members spanning the nation. The SITA member telephone companies are united in their shared vision of bringing quality telephone service to Kansas rural communities.[5]

II. THE MISSOULA PLAN IS A SIGNFICANT STEP TOWARDS ACHIEVING INTERCARRIER COMPENSATION REFORM

The existing intercarrier compensation rules functioned well with essentially two types of carriers – incumbent local exchange carriers ("ILECs") and interexchange carriers ("IXCs") – and within one type of communications environment – yesterday's narrowband world. In contrast, today's carriers – ILEC and non-ILEC, rural and non-rural, wireline and wireless, VoIP and circuit-switched -- must compete for consumers in a new world of broadband connectivity – one that is intermodal and increasingly Internet-oriented. To compete effectively, carriers today must respond with innovative and enhanced service offerings that allow consumers to enjoy technologically advanced, feature-rich communications devices and equipment.

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4 Comments of Rural Telephone Service Company, Inc. (filed Oct. 25, 2006) ("RuralTel Comments").

5 A list of SITA's member telephone companies is attached hereto as Appendix A.

Grounded in new and advanced technologies, the increased number and types of competitive carriers, however, have increased opportunities to arbitrage compensation for the use of the Public Switched Telephone Network. SITA believes that the industry must move towards a system where carriers exchange traffic and compensate one another on a more rational basis that reduces incentives for arbitrage.

The SITA member telephone companies have studied the Missoula Plan and concluded that although it does not address every issue, the Plan is a significant step towards replacing the complexities of the existing regime with a unified intercarrier compensation plan. The Plan recognizes the differences between the smallest, rate-of-return regulated rural carriers and mid-sized rural carriers, by creating two different Tracks for each category of company. SITA supports the Missoula Plan's establishment of a separate Track for small rural carriers and a reform structure that ensures that small rural ILECs will not be required to reduce their intrastate access service rates below their current levels for interstate access charges.

In at least one respect, however, SITA finds that the Missoula Plan falls short of distinguishing between small and mid-sized rural ILECs: the Plan's provision requiring exchanges acquired by Track 3 carriers to retain the Track classification of the selling carrier. As discussed below, this provision fails to recognize that applying this requirement would impose substantial burdens on small rural carriers and ultimately discourage the expansion of such carriers into rural communities that have historically been underserved.

III. THE MISSOULA PLAN'S "TRACK RETENTION RULE" WOULD ERECT UNWARRANTED BARRIERS TO THE ACQUISITION AND MODERNIZATION OF RURAL EXCHANGES BY SMALL CARRIERS

Under the Missoula Plan, Covered Rural Telephone Companies ("CRTCs") may acquire exchanges from other carriers, but the acquired exchanges must retain the Track classification of the selling carrier (hereafter, "Track Retention Rule").[6] The proposed rule would impair the efforts of small telephone companies to make acquisitions and investments in facilities to provide quality telecommunications services in historically underserved rural areas. The Track Retention Rule will have these negative repercussions because it fails to recognize the unique circumstances of Track 3 carriers -- circumstances that the Commission has long recognized as warranting reduced regulation of these carriers.

A. The Reduction in Acquisitions of Rural Exchanges by Small Telephone Companies That Would Result From The Track Retention Rule Would Be Contrary To The Public Interest

The Track Retention Rule arbitrarily treats CRTCs that acquire exchanges from very large carriers the same as those large carriers even though there are significant differences between CRTCs and such large carriers. The rule would make it far more difficult, if not impossible, for small rural ILECs to acquire exchanges that fall within Track 1 or Track 2. Because the acquired exchanges must retain the Track designation of the selling carrier, following such an acquisition, a small rural ILEC could be required to implement the Plan's intercarrier compensation reform for <u>as many as three different Tracks</u> in the same study area.[7] The small rural carrier would be penalized by not only having to implement different access charges and different subscriber line charges, but by having to make different calculations for the Restructure Mechanism.

That same small rural carrier could also be required to adhere to as many as <u>three different transition schedules</u> to implement intercarrier compensation reform, since the Plan adopts a separate transition schedule for each Track. With at least three "Steps" in the transition

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6 Missoula Plan, p. 6.

7 See RuralTel Comments, p. 1 (explaining consequences of Track Retention Rule on its acquisition of exchanges following the Plan's August 1, 2006 grandfather date).

schedule for each Track, the difficulty and cost of complying with the Track Retention Rule would create a significant barrier to the acquisition of Track 1 or Track 2 exchanges in contravention of the public interest.

The impediments to the acquisition of Track 1 and/or Track 2 exchanges imposed by the Track Retention Rule cannot be underestimated. The time, effort, and coordination required would tax even the resources of larger ILECs, which have at their disposal economic and administrative resources far greater than those of small rural ILECs. The substantial burdens imposed by the Track Retention Rule would be proportionately far greater for small rural carriers than for Track 2 rural ILECs.

B. The "Track Retention Rule" Would Discourage Business Growth and Innovation in Rural Communities That Have Historically Been Underserved

Unless the Commission adopts a limited exception for small rural carriers, the Track Retention Rule can be expected to have negative repercussions for America's rural communities, which have historically been underserved. Small rural ILECs seeking to expand their market and increase their subscriber base will likely "think twice" before acquiring exchanges from a Track 1 or Track 2 ILEC. Faced with the burden of implementing multiple and different reductions in intercarrier charges according to different transition schedules, a small rural ILEC may simply conclude that the substantial burdens of regulatory compliance with the Track Retention Rule outweigh the potential benefits of acquiring and upgrading Track 1 or Track 2 exchanges.

The modernization of our country's rural telecommunications infrastructure will be impaired if small rural carriers choose to forgo the acquisition of exchanges from Track 1 and Track 2 carriers – even where the exchanges in question possess densities and demographics similar or identical to the Track 3 exchanges operated by small rural ILECs. The potential for facilities investment and the prospect of delivering high-quality and innovative services to historically underserved rural communities may never be realized anytime soon unless the Commission adopts a small rural carrier exception to the Track Retention Rule.

IV. THE COMMISSION SHOULD MODIFY THE MISSOULA PLAN TO INCORPORATE A SMALL RURAL CARRIER EXCEPTION TO THE "TRACK RETENTION RULE"

RuralTel submitted a proposal to the Commission that would modify the Missoula Plan by adding a limited exception to the Track Retention Rule.[8] Specifically, RuralTel proposes that the Commission exempt rural carriers serving 50,000 or fewer access lines from the requirement that exchanges acquired by CRTCs retain the Track designation of the selling carrier. SITA supports RuralTel's proposed small rural carrier exception and urges the Commission to modify the Track Retention Rule to avoid imposing unnecessary and onerous administrative burdens upon small rural carriers and discouraging them from acquiring and investing in rural exchanges.

A. The Commission Has Long Recognized the Unique Circumstances Facing Small Rural Carriers and Consistently Sought to Reduce the Regulatory and Administrative Burdens Placed on Such Companies

Reducing or eliminating regulatory and administrative burdens on small telephone companies has long been a goal of the Commission. For example, in its 1987 proceeding streamlining the regulation of small telephone companies, the Commission emphasized that its goal in that proceeding was to "eliminate unnecessary direct burdens affecting small telephone companies, thereby decreasing their regulatory costs."[9] To achieve that goal, the Commission adopted rules relieving the smallest carriers (those serving 50,000 or fewer access lines) of the

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8 RuralTel Comments, p. 6.

9 *Regulation of Small Telephone Companies*, Report and Order, 2 FCC Rcd. 3811, 3811 (1987) ("*Small Telco Streamlining Order*"); Order, 3 FCC Rcd. 5770 (1988) (correcting publication of erroneous set of rules).

administrative costs and burdens of filing annual access tariffs, complying with data filing requirements, and liability for automatic refunds.[10]

The Commission in doing so recognized that, unlike larger carriers, small rural companies lack sufficient administrative resources and the economies of scale necessary to satisfy the burdens of regulatory compliance.[11] Indeed, the Commission has specifically recognized that without these advantages enjoyed by larger carriers, the administrative burdens of regulatory compliance are <u>proportionately greater</u> for small telephone companies than for other companies.[12]

The Commission's commitment to addressing the special concerns of small carriers is a continuing one. In its 1990 order adopting price cap regulation for the largest LECs, the Commission initiated further proceedings to specifically address issues of concern to small and mid-size LECs and reiterated its commitment to the goal of "reducing administrative burdens and increasing flexibility and efficiency" for these carriers.[13] Noting that many states have recognized that small ILECs face unique circumstances, the Commission emphasized the need to ensure that desirable regulatory reforms are applied to small carriers with "sensitivity to their special circumstances."[14]

The Commission's sensitivity to reducing the regulatory burden for small telephone companies is similarly reflected in its relaxation of the all-or-nothing rule.[15] The all-or-nothing

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10 *Small Telco Streamlining Order*, 2 FCC Rcd. at 3812-13.

11 *Id.* at 3812.

12 *Id.* at 3813.

13 *Policy and Rules Concerning Rates for Dominant Carriers*, Second Report and Order, 5 FCC Rcd. 6786, 6827 (1990).

14 *Id*.

15 Section 61.41 of the Commission's rules provides that if a price cap carrier is in a merger, acquisition, or similar transaction, it must continue to operate under price cap regulation after the transaction. 47 C.F.R. § 61.41(c)(1). In addition, when rate-of-return and price cap carriers merge or acquire one another, the rate-of-

rule was adopted to prevent a carrier from shifting costs from its price cap affiliate to its rate-of-return affiliate, and to prevent carriers from gaming the system by switching back and forth between the two different regulatory regimes.[16] The Commission, however, subsequently adopted a limited exception to the all-or-nothing rule for small carriers serving 50,000 or fewer access lines.[17]

In doing so, the Commission specifically recognized that: (1) the issues of cost-shifting and gaming were not implicated when a rate-of-return carrier acquires price cap lines but intends to operate all of its lines, including the newly acquired price cap lines, under rate-of-return regulation; (2) the Commission routinely granted waivers of the rule "with no discernable adverse effects" with respect to the cost-shifting and gaming issues the rule was designed to preclude; and (3) the all-or-nothing rule increases transaction costs and creates uncertainty for small rural carriers that seek to acquire lines from price cap carriers.[18]

The Commission has not wavered in its commitment to recognizing the unique circumstances of small rural carriers nor has it failed to recognize that these carriers face increased challenges on numerous fronts. The Commission in 1993 observed that changing

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return carrier must convert to price cap regulation within one year. 47 C.F.R. § 61.41(c)(2). Furthermore, if an individual rate-of-return carrier or study area converts to price cap regulation, all of its affiliates or study areas must also convert to price cap regulation, except for its average schedule affiliates. 47 C.F.R. §§ 61.41(b), 69.605. Finally, LECs that become subject to price cap regulation are not permitted to withdraw from such regulation or participate in NECA tariffs. 47 C.F.R. §§ 61.41(d), 61.41(a)(3). These regulatory requirements collectively are referred to as the "all-or-nothing" rule.

16 *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Report* and Order and Second Further Notice of Proposed Rulemaking, 19 FCC Rcd 4122, 4129-30 (2004) ("*MAG Order*").

17 *Id.* at 4130. *See* 47 C.F.R. § 61.41(e).

18 *MAG Order,* 19 FCC Rcd. at 4130-31.

regulatory requirements create new expectations and demands among consumers, and new technologies increase the need for regulatory flexibility.[19]

The challenges the Commission observed in 1993 have not diminished. To the contrary, they have multiplied and increased in complexity, underscoring the need for the Commission to assure that desirable regulatory reform be "applied with sensitivity" to the special circumstances of small rural carriers.

The Missoula Plan reflects an unprecedented effort by industry carriers to reform the intercarrier compensation rules. But while there is industry-wide agreement that such reform is necessary, there also exists a need to recognize the unique circumstances and challenges facing small rural carriers. The Missoula Plan succeeds in doing so in certain respects; however, its treatment of exchanges acquired by CRTCs must be tailored to further the public interest and avoid imposing unnecessarily burdensome requirements upon small rural ILECs.

SITA believes that the Track Retention Rule will adversely affect the public interest by discouraging small rural ILECs from pursuing acquisition opportunities involving exchanges served by Track 1 and Track 2 carriers. Such acquisitions are essential to ensuring the provision of high-quality and innovative services in historically underserved rural communities. The Track Retention Rule fails to recognize that by subjecting small rural carriers to the same regulatory treatment as larger rural carriers, it will impose substantial burdens on these small carriers and discourage them from pursuing acquisition opportunities that could result in investment in infrastructure, increased choice, and innovative service offerings in rural communities that historically have been underserved. SITA therefore urges the Commission to adopt the small rural carrier exception to the Track Retention Rule proposed by RuralTel.

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19 *Regulatory Reform for Local Exchange Carriers Subject to Rate of Return Regulation*, CC Docket No. 92-135, 8 FCC Rcd. 4545, 4545 (1993) ("*Small Telco Reform Order*").

RuralTel's proposed exception for small carriers serving 50,000 or fewer access lines presents a solution that is consistent with the Commission's longstanding commitment to reducing regulatory and administrative burdens on small rural carriers. The proposed exception will allow the Commission to tailor the Track Retention Rule in a manner that promotes simplicity of administration for small rural carriers and facilitates a more advanced telecommunications infrastructure for rural America.

B. The Commission Has Maintained the 50,000 Access Line Benchmark for Establishing Reduced Regulation for Small Rural Carriers

The Commission has consistently used 50,000 access lines as a threshold for defining and adopting rules that address the special circumstances of small rural carriers. The Commission recognized the 50,000 line benchmark in 1987 when it relieved small telephone companies of the administrative costs and burdens of filing annual access tariffs, complying with data filing requirements, and liability for automatic refunds.[20]

In defining small telephone companies as those serving 50,000 or fewer access lines per study area, the Commission emphasized that its definition matched the Separations Manual's definition of small telephone companies eligible for small company assistance from the interstate Universal Service Fund.[21] The Commission found the 50,000 line threshold to be "practical and reasonable for most companies"[22] and, in the nearly 20 years since, has not since disturbed that benchmark. To the contrary, the Commission re-affirmed the validity of the 50,000 line threshold when it expanded the scope of the small company rules to allow rate-of-return

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[20] *Small Telco Streamlining Order,* 2 FCC Rcd. 3811.

[21] *Id.* at 3812.

[22] *Id.*

regulated local exchange carriers serving 50,000 or fewer access lines to calculate common line rates on the basis of historical costs.[23]

Setting a threshold of 50,000 or fewer access lines for a limited exception from the Track Retention Rule would be consistent with the Commission's existing benchmark established in its rules and the Commission's commitment to reducing unwarranted regulation for small rural carriers.

V. CONCLUSION

The Commission has long recognized that small rural carriers face special circumstances and that the burdens of regulatory compliance are proportionately greater for such carriers than for other companies. The Missoula Plan should be amended to distinguish between small rural carriers and larger carriers in the application of the Track Retention Rule. To avoid precluding small rural carriers from acquiring and modernizing rural exchanges, the Commission should add to the Missoula Plan a limited exception to the Track Retention Rule for small carriers serving 50,000 or fewer access lines.

Respectfully submitted,

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Dated: October 25, 2006

[23] *Small Telco Reform Order,* 8 FCC Rcd. at 4559.

APPENDIX A

STATE INDEPENDENT TELEPHONE ASSOCIATION OF KANSAS

<u>KANSAS TELEPHONE COMPANIES</u>

Bluestem Telephone Company
Blue Valley Tele-Communications, Inc.
Council Grove Telephone Company
Craw-Kan Telephone Cooperative, Inc.
Cunningham Telephone Company, Inc.
Golden Belt Telephone Association, Inc.
H&B Communications, Inc.
Haviland Telephone Company, Inc.
JBN Telephone Company, Inc.
LaHarpe Telephone Company, Inc.
Madison Telephone, LLC
Moundridge Telephone Company, Inc.
Mutual Telephone Company
Peoples Telecommunications, LLC
Pioneer Telephone Association, Inc.
Rainbow Telecommunications Association
Rural Telephone Service Company, Inc.
S&A Telephone Company
S&T Telephone Coop. Assn., Inc.
South Central Telephone Association, Inc.
Southern Kansas Telephone Company, Inc.
Sunflower Telephone Company, Inc.
The Tri-County Telephone Association, Inc.
United Telephone Association, Inc.
Wheat State Telephone, Inc.